



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2017-0019]

RIN 0750-AJ68

**Defense Federal Acquisition Regulation Supplement: State
Sponsor of Terrorism—North Korea (DFARS Case 2018-D004)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the designation by the Department of State of North Korea as a state sponsor of terrorism.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule implements the November 20, 2017, designation by the Department of State of North Korea as a state sponsor of terrorism, in accordance with section 6(j)(1)(A) of the Export

Administration Act of 1979. A state sponsor of terrorism is a country, the government of which has repeatedly provided support for acts of international terrorism. The Department of State previously designated North Korea as a state sponsor of terrorism in January 1988, but rescinded the designation in October 2008. Consistent with the November 20, 2017, action, North Korea is added to the list of countries that are state sponsors of terrorism in the definition of "state sponsor of terrorism" in paragraph (a) of the provisions at DFARS 252.225-7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities-Representation; and DFARS 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. The provision at DFARS 252.225-7050 implements 10 U.S.C. 2327, which prohibits DoD from entering into a contract with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism. The provision at 252.225-7049 implements 10 U.S.C. 2279, which restricts acquisitions of commercial satellite services from any entity-

- Owned by the government of a covered foreign country (China, North Korea, or any state sponsor of terrorism); or
- Planning or expected to provide or use launch or other satellite services under the contract from a covered foreign country.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates the list of countries that are state sponsors of terrorism in the definition of "state sponsors of terrorism" in paragraph (a) of the DFARS provisions 252.225-7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities-Representation; and DFARS 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. This revision does not impact use of clauses, their applicability to contracts or subcontracts valued at or below the simplified acquisition threshold, or their applicability to contracts or subcontracts for the acquisition of commercial items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States.

V. Publication of this Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is codified at Title 41 of the United States Code (formerly known as the Office of Federal Procurement Policy Act). Specifically, 41 U.S.C 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adds North Korea to the list of countries that fall

within the DFARS definition of "state sponsors of terrorism," consistent with the November 20, 2017, designation of the country by the Secretary of State. These requirements affect only the internal operating procedures of the Government.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply. However, the changes to these DFARS provisions, do not impose additional information collection requirements or change the burden under two currently approved collections—OMB Control Number 0704-0525, entitled "Foreign Commercial Satellite Services," and OMB Control Number 0704-0187, entitled "Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements)."

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer L. Hawes,

Regulatory Control Officer

Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225-7049 [Amended]

2. Section 252.225-7049 is amended by—

a. In the clause heading, removing the date “(OCT 2015)” and adding “(JAN 2018)” in its place; and

b. In paragraph (a), the definition of “State sponsor of terrorism”—

i. Removing “2405(j)(i)(A))” and adding “2405(j)(1)(A))” in its place; and

ii. Adding, after “Iran,”, the country of “North Korea”.

252.225-7050 [Amended]

3. Section 252.225-7050 is amended by—

a. In the clause heading, removing the date “(OCT 2015)” and adding “(JAN 2018)” in its place; and

b. In paragraph (a), the definition of “State sponsor of terrorism”, adding after “Iran,”, the country of “North Korea”.

